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STATE OF WASHINGTON

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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October 19, 2004

Re: Growth Management Hearings Boards – Rule Changes

Dear Interested Person:

I am writing to let you know the status of the boards' rule change process. As I last reported in the cover letter to the Rules Report sent to you on July 22, 2004, the Joint Boards have a schedule for addressing the subjects raised in the public meetings last spring. The Joint Boards have completed the first phase as set out in the Rules Report and cover letter. This letter outlines the steps that have been taken thus far, and sets out the matters that will be addressed in the next phase. We will begin our second phase with a rule-drafting discussion led by the attorney members of the boards, which you are welcome to attend.

First, the steps that have been taken so far: After the boards issued the Rules Report, the rule changes described as "Rules that can be readily drafted" in the Rules Report were drafted and published in the Washington State Register on September 1, 2004. We received no comments on these rule changes, which are largely devoted to service requirements. At the Joint Boards Meeting on October 7, 2004, the Board added one sentence to the draft rules and adopted them all. A copy of the adopted rule changes are attached for your reference. They will become effective 31 days after publication, which will occur on November 3, 2004.

The only addition to the published draft rules was a new sentence added to WAC 242-02-320, regarding electronic filing. The Boards have agreed to accept electronic filing to aid parties in meeting their service deadlines. However, the Boards do not have either staff or budget for making the needed paper copies of documents filed electronically. Therefore, we provided that electronic filings must be followed with mailed paper copies. The new sentence directs the parties not to file any exhibits electronically, but provides that the exhibits will be deemed timely filed if included in the mailed paper copies.

We would also draw your attention to WAC 242-02-52001, which clarifies that the evidence before the Board normally consists of the exhibits cited in the briefs and attached to them. This was intended to clarify some of the misunderstanding about how parts of the record prepared by the local jurisdiction should be placed before the Board.

A clarification was also made to WAC 242-02-893, regarding compliance hearings. It now also specifically addresses the evidence in compliance proceedings as well:

The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and either attached to the briefs or specifically identified as exhibits submitted and attached to prior briefs filed in the same case number.

WAC 242-02-893(2)

The second phase of the boards' process for responding to suggestions for improvements in board procedures began with a discussion of topics at the Joint Boards meeting this month. In addition to adopting the rule changes attached, we discussed topics for further rule changes. Of the "Suggestions for Rule Changes that may require additional time" discussed in the Rules Report, the boards determined to refer two of them for drafting to the committee of board attorney members: rules on identification of "duly authorized representatives"; and the procedures for a new Petition for Review filed based on a compliance enactment.

We determined not to pursue a rule requiring that public participation challenges be addressed by motion. A motion on these grounds is possible under existing rules, but it is not clear that such challenges would always fit within the existing hearing and briefing schedules, or that a ruling on a public participation challenge would necessarily resolve the other issues in a case. Therefore, the boards will not be proposing such a rule change.

On the issue of new evidence arising in the course of a hearing, the boards determined to be sensitive to this issue in the future, but did not believe a rule was needed. If an objection is made at the hearing, supplemental briefing may be appropriate. This would be within the sound discretion of the presiding officer.

As to mandatory mediation, the boards felt that mediation possibilities should be assessed on a case-by-case basis by the presiding officer in each case. It is also likely that a change in the statute would be necessary to make mediation compulsory and to provide sanctions if a party did not participate.

Two new topics were discussed for rule changes. The first concerns the certified record for appeal to court from a board decision. The boards will explore whether a requirement that parties designate the portions of the record needed for appeal would improve the efficiency of certifications of the record.

The second new topic concerns procedures for compliance hearings generally. Currently, compliance hearings are governed by case-specific orders, usually issued by the presiding officer. Since the GMA permits persons who participated in the local government's compliance response proceedings to also participate in the board's compliance hearing (RCW 36.70A.330(2)), the board may not know who the participants in a given compliance hearing will be, and therefore may not be able to provide them with notice of the procedures for that case. In addition, it may assist participants to have uniform compliance hearing procedures that they may expect in most cases, regardless of the board or case in which they appear. Therefore, the boards will consider drafting a rule that would cover compliance proceedings generally. This topic was also referred to the attorney board member committee for drafting.

In sum, four topics: compliance hearing procedures; designation of the certified record; new PFRs in compliance proceedings; and designation of a “duly authorized representative” *will be discussed further in a public meeting led by the four attorney members on the joint boards.* **This meeting will be held on December 1, 2004, beginning at 9:00 a.m. We estimate that the meeting will last all day. If you are interested in attending this meeting, please let me know and I will send you notice of the location (which will be in Seattle) when that has been determined.** Please provide your electronic mail address as well as your mailing address for this purpose. This meeting will be noticed formally as well.

Thank you for your continuing interest and support for this process. Please let me know if you have any questions or concerns.

Very truly yours,

Margery Hite
Rules Coordinator

Attachment: Rules Changes To Be Published November 3, 2004 in the Washington State Register

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